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10 UNITED STATES OF AMERICA
11 NATIONAL LABOR RELATIONS BOARD

12 COASTAL MARINE SERVICES, INC.,

13 Respondent,

14 And

15 INTERNATIONAL ASSOCIATION OF
16 HEAT & FROST INSULATORS AND
17 ALLIED WORKERS, LOCAL 5,

18 Charging Party.

Case No.: 21-CA-139031

**EXCEPTIONS TO THE DECISIONS
OF THE ADMINISTRATIVE LAW
JUDGE**

19 Charging Party hereby files the following Exceptions to the Decision of the
20 Administrative Law Judge ("ALJ").

<u>No.</u>	<u>Exception</u>	<u>Language</u>
21 1.	Page 1	To the failure of Administrative Law Judge ("ALJ") to
22		include lines on each page to reference in exceptions.
23		
24 2.	Page 1	To the suggestion that the ALJ considered the brief of the
25		Charging Party. With exception of one argument raised in the
26		Charging Party's brief, the ALJ ignored all the other
27		arguments and did not even comment on them.
28 3.	Page 1, footnote 1	The suggestion that a portion of the complaint was resolved.
		It was not resolved.

<u>No.</u>	<u>Exception</u>	<u>Language</u>
4.	Passim ¹	To the failure of ALJ to recognize that the disputed agreement is a Forced Unilateral Arbitration Procedure ("FUAP").
5.	Page 3, fn. 3	To the failure of the ALJ to recognize and acknowledge that the Federal Arbitration Act does not apply. He incorrectly concludes that the issues of the applications of the Federal Arbitration Act were considered in other Board cases. To this failure to address these issues in his Decision.
6.	Pages 3-4	To the failure of the ALJ to recognize that the FUAP violates the Act for reasons addressed in the Charging Party's brief.
7.	Page 4	To the failure of the ALJ to recognize that the employees had not asserted collective, group claims, class claims because they had been prohibited from doing so by the FUAP.
8.	Page 4	To the conclusions in their entirety.
9.	Pages 4-5	To the remedy in its entirety. The remedy is inadequate.
10.	Pages 5-6	To the order in it its entirety because it does not contain adequate remedies and an adequate order.
11.	Pages 5-6	To the order in that it does not prohibit waiver of representative, or any group claims in all forums. It is limited to only "joint, class or collective claims."
12.	Appendix	To the notice because it contains the language "[c]hoose representatives to bargain with us on your behalf." The Act allows broader activity or action.
13.	Appendix	To the notice in the extent that it contains "[a]ct together with other employees for your benefit and protection." This is not the statutory phrase.
14.	Appendix	To the inadequacy of the notice in that it does not contain adequate affirmative relief or adequate prohibitory language..
15.	Appendix	To the failure of the notice to contain language which would require the Employer to acknowledge that it violated the law.
16.	Page 1, fn. 1	To the failure of the ALJ to recognize and adopt the objections to the partial stipulation.
17.	Passim	To the failure of the ALJ to find that there is no contract of employment.
18.	Passim	To the failure of ALJ to find that there is no transaction affecting interstate commerce within the meaning of Federal

¹ We use "passim" to mean anywhere and everywhere.

<u>No.</u>	<u>Exception</u>	<u>Language</u>
		Arbitration Act.
19.	Passim	To the failure of ALJ to find that there is no controversy governed by the FUAP subject to the Federal Arbitration Act affecting interstate commerce.
20.	Passim	To the failure of ALJ to find that there no dispute covered by the FUAP affecting interstate commerce.
21.	Passim	To the failure of ALJ to find that the Federal Arbitration Act does not govern this matter nor does it govern the FUAP.
22.	Passim	To the failure of ALJ to address the issues raised by the Charging Party that the Federal Arbitration Act cannot override other important principles of federal law.
23.	Passim	To the failure of ALJ to recognize that the Federal Arbitration Act cannot override other important principles of state law.
24.	Passim	To the failure of ALJ to conclude that check box opt out provision violates the Act because it is a form of interrogation.
25.	Passim	To the failure of ALJ to find that the attempt to foreclose “review” renders the FUAP unlawful.
26.	Passim	To the failure of ALJ to find that the FUAP would prohibit collective actions which are not preempted by the FAA and state law.
27.	Passim	To the failure of ALJ to find that the FUAP unlawfully prohibits group claims that are not class actions, representative actions, collective actions or other procedural devices.
28.	Passim	To the failure of ALJ to recognize that the FUAP is invalid because it interferes with Section 7 rights to engage in concerted activity or boycotts, banners, strikes, walkouts and other activities.
29.	Passim	To the failure of ALJ to find that the FUAP unlawfully prohibits joint action.
30.	Passim	To the failure of ALJ to find that the FUAP is unlawful because it would prohibit salting and apply after employment ends.
31.	Passim	To the failure of ALJ to find that the FUAP is unlawful in that it interferes with Section 7 rights because it forecloses group claims brought by a union as the representative of any employee or employees of other employers.
32.	Passim	To the failure of ALJ to find that the FUAP is unlawful

<u>No.</u>	<u>Exception</u>	<u>Language</u>
		because it imposes additional costs on employees to bring employment related claims, thus interfering with Section 7 rights.
33.	Passim	To the failure of ALJ to find that the FUAP is unlawful because it would prohibit an employee of another employer from assisting an employee respondent or joining with an employee respondent to bring a claim.
34.	Passim	To the failure of ALJ to find that the FUAP is unlawful in that it interferes with Section 7 rights, because it applies to parties who are not the employer but may be agents of the employer or employees of other employers.
35.	Passim	To the failure of ALJ to find that the FUAP violates ERISA and Section 7 rights to bring group claims with respect to benefits.
36.	Passim	To the failure of ALJ to find that the FUAP is unlawful in that it interferes with Section 7 rights because it restricts the right of workers to act together to defend against the claims brought by the employer.
37.	Passim	To the failure of ALJ to find that the FUAP is unlawful under the Norris La Guardia Act.
38.	Passim	To the failure of ALJ to find that the rules alleged in the complaint which prohibit concerted activity renders the FUAP unlawful.
39.	Passim	To the failure of ALJ to find that the FUAP is unclear and ambiguous as to what it covers and therefore the Board should overrule the decision in <i>Lutheran Heritage Village-Livonia</i> .
40.	Passim	To the failure of ALJ to find that the Religious Freedom Restoration Act extends to the religious activity of Section activity of employees and thus renders the FUAP unlawful under the Act.
41.	Passim	To the refusal of the ALJ to allow Charging Party to produce further evidence.

Dated: March 7, 2016

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld
DAVID A. ROSENFELD

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1 **CERTIFICATE OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed
3 in the County of Alameda, State of California, in the office of a member of the bar of this Court,
4 at whose direction the service was made. I am over the age of eighteen years and not a party to
5 the within action.

6 On March 7, 2016, I served the following documents in the manner described below:

7 **EXCEPTIONS TO THE DECISIONS OF THE ADMINISTRATIVE LAW JUDGE**

- 8 ☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of
9 Weinberg, Roger & Rosenfeld for collection and processing of correspondence for
10 mailing with the United States Postal Service, and I caused such envelope(s) with
postage thereon fully prepaid to be placed in the United States Postal Service at
Alameda, California.
- 11 ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of
12 Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be
transmitted by facsimile and I caused such document(s) on this date to be transmitted by
13 facsimile to the offices of addressee(s) at the numbers listed below.
- 14 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy
15 through Weinberg, Roger & Rosenfeld's electronic mail system from
json@unioncounsel.net to the email addresses set forth below.

16 On the following part(ies) in this action:

17 Warren L. Nelson
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18 L. Brant Garrett
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21
22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct. Executed on March 7, 2016 at Alameda, California.

24 */s/ Joanna Son*

25 Joanna Son